

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116

Grace R Chiu  
Direct Dial: (202) 424-7783  
Fax: (202) 424-7645  
E-mail: GRChiu@rdlav.com

TELEPHONE (202) 424-7500  
FAX (202) 424-7645  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
(212) 973-0111 FAX (212) 891-9598

November 6, 2002

## VIA COURIER

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

FCC/MELLON NOV 06 2002  
02 858

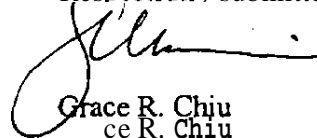
Re: Application of Looking Glass Networks, Inc. and Lightwave Communications,  
Inc. for Domestic Section 214 Authorization to Transfer Assets

Dear Ms. Dortch

On behalf of Looking Glass Networks, Inc. ("LGN") and Lightwave Communications, Inc. ("Lightwave"), enclosed please find an original and six (6) copies of the application for Commission approval to transfer Lightwave's **assets** to LGN. **Also** enclosed is a check in the amount of \$815.00, payable to the FCC, **which** satisfies the filing fee required for **this** application under line 2.b. of Section 1.1105 of the Commission's rules.<sup>1</sup> Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided.

Please direct **any** questions regarding this filing to the undersigned.

Respectfully submitted,



Grace R. Chiu  
ce R. Chiu

Counsel for **Looking Glass Networks, Inc.**

Enclosures

<sup>1</sup> See FCC Suspends Collection of the July 2002 Amended Schedule of Application Fees, *Public Notice*, DA 02-2513 (rel. Oct 4, 2002).

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Ms. Marlene H. Dortch, Secretary  
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cc via email:

William Dever (WCB)  
Tracy Wilson (WCB)  
Jodi Caro (LGN)  
Mark J. Ricigliano (Lightwave)  
James J. Freeman (KDW)  
Katherine Barker (KDW)  
Andrew D. Lipman

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING  (1) LOCKBOX #     358145	FEDERAL COMMUNICATIONS COMMISSION <b>REMITTANCE ADVICE</b>	Approved by OMB <b>3060-0589</b> Page No <u>1</u> of <u>1</u>
		SPECIAL USE FCC USE ONLY
<b>SECTION A - PAYER INFORMATION</b>		
(12) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) Swidler Berlin Shereff Friedman LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$815.00</b>
(14) STREET ADDRESS LINE NO. 1 3000 K Street, N.W.		
(5) STREET ADDRESS LINE NO. 2 Suite 300		
(6) CITY Washington		(7) STATE D.C.
(8) ZIP CODE 20007		
(19) DAYTIME TELEPHONE NUMBER (include area code) 202-424-7500		(10) COUNTRY CODE (if not in U.S.A.)
<b>FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED</b>		
(11) PAYER (FRN) 0004-3539-00		(12) PAYER (TIN) 0132679676
(14) STREET ADDRESS LINE NO. 1 1111 W. 22nd Street		
(15) STREET ADDRESS LINE NO. 2 Suite 600		
(16) CITY Oak Brook		(17) STATE IL
(18) ZIP CODE 60523		
(19) DAYTIME TELEPHONE NUMBER (include area code) 630-242-2000		(20) COUNTRY CODE (if not in U.S.A.)
<b>FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED</b>		
(21) APPLICANT (FRN) 0004350989		(22) APPLICANT (TIN) 36-4359168
<b>COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>		
(23A) CALL SIGN/OTHER ID		(24A) PAYMENT TYPE CODE CUT
(25A) QUANTITY 1		
(26A) FEE DUE FOR (PTC) \$815.00	(27A) TOTAL FEE \$815.00	FCC USE ONLY
(28A) FCC CODE 1		(29A) FCC CODE 2
(23B) CALL SIGN/OTHER ID		(24B) PAYMENT TYPE CODE    (25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1		(29B) FCC CODE 2
<b>SECTION D - CERTIFICATION</b>		
(30) CERTIFICATION STATEMENT <div style="text-align: center;">           I, _____, certify under penalty of perjury            SIGNATURE  </div>		
EXPIRATION DATE:		
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 15%;"> <input type="checkbox"/> VISA         </div> <div style="width: 60%;">           I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.         </div> <div style="width: 20%; text-align: right;"> <div style="border: 1px solid black; padding: 2px; width: 100px;">EXPIRATION DATE:</div> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;">SIGNATURE _____</div> <div style="width: 45%;">DATE _____</div> </div>		

	)	
In the Matter of the Application of	)	
	)	
<b>LOOKING GLASS NETWORKS, INC.,</b>	)	
Transferee,	)	
	)	
and	)	
	)	
<b>LIGHTWAVE COMMUNICATIONS, INC.,</b>	)	WC Docket No. 02-_____
Transferor,	)	
	)	
For Domestic Section 214 Authorization	)	
To Transfer Assets	)	

## I. INTRODUCTION

<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Report and Order*, CC Docket No. 01-150, 17 FCC Rcd 5517 (2002) (“*Streamlining Order*”) (modifying its filing requirements for asset acquisitions).

## II. INFORMATION REQUIRED UNDER SECTION 63.04(a)

In support of this Application, Applicants submit the following information pursuant to Sections 63.03 and 63.04(a) of the Commission's **rules**.<sup>3</sup>

(1) Name, address and telephone number of each applicant

Transferee: Looking Glass Networks, Inc.  
1111 West 22nd Street  
Suite 600  
Chicago, Illinois 60523  
Tel: (630) 242-2000  
Fax: (630) 242-2001

Transferor: Lightwave Communications, Inc.  
14304 Greenview Drive  
Suite 302  
Laurel, Maryland 20708  
Tel: (888) 953-9300  
Fax: (301) 953-2454

(2) State of organization.

Transferee: Transferee is organized under the **laws** of the State of Delaware.

Transferor: Transferor is organized under the laws of the State of Delaware.

(3) Contact person for this Application.

Correspondence and communications concerning this Application should be directed to:

For Transferee:

Grace R. Chiu  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007-5116  
Tel: (202) **424-7500**  
Fax: (202) 424-7645  
Email: [GRChiu@swidlaw.com](mailto:GRChiu@swidlaw.com)

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<sup>3</sup> 47 C.F.R. §§ 63.03 and 63.04(a).

For Transferor:

James J. Freeman  
Katherine E. Barker  
Kelley Drye and Warren, LLP  
1200 19th Street, N.W.  
Suite 500  
Washington, DC 20036  
Tel: (202) 955-9600  
Fax: (202) 955-9792  
Email: [jfreeman@kelleydrye.com](mailto:jfreeman@kelleydrye.com)  
[kbarker@kelleydrye.com](mailto:kbarker@kelleydrye.com)

(4) Ownership of Applicants.

Transferee: The following entities directly or indirectly own ten percent (10%) or more of the equity of Transferee:

- (a) Name: Looking Glass Networks Holding Co., Inc.  
("LGN Holding")  
Address: 1111 West 22nd Street  
Suite 600  
Chicago, Illinois 60523  
Citizenship: U.S.A.  
Percentage Owned: 100%  
Principal Business: Holding company

The following entity directly owns 100% of the equity of **LGN Holding**:

- (b) Name: Looking Glass Networks, LLC ("LGN LLC")  
Address: 1111 West 22nd Street  
Suite 600  
Chicago, Illinois 60523  
Citizenship: **U.S.A.**  
Percentage Owned: 100%  
Principal Business: Holding company

The following entities directly hold membership interests in **LGN LLC**:

- (c-1) Name: Madison Dearborn Capital Partners 111, L.P.  
("MDCP III")  
Address: Three **First** National Plaza • Suite 3800  
Chicago, Illinois 60602  
Citizenship: U.S.A.  
Percentage Owned: 70%  
Principal business: Investment

The general partner of **MDCP III** is:

Name: Madison Dearborn Partners III, L.P.  
Address: Three First National Plaza - Suite 3800  
Chicago, Illinois 60602  
Citizenship: U.S.A.  
Principal business: Investment

(c-2) Name: Battery Ventures VI, L.P. ("Battery VI")  
Address: 20 William Street  
Wellesley, Massachusetts 02481  
Citizenship: U.S.A.  
Percentage Owned: 19%  
Principal Business: Private equity investor

The general partner of **Battery VI** is:

Name: Battery Ventures VI, LLC  
Address: 20 William Street  
Wellesley, Massachusetts 02481  
Citizenship: U.S.A.  
Principal Business: Private equity investor

No other person or entity directly or indirectly owns ten percent (10%) or more of the equity of LGN, the Transferee.

Transferor. No person or entity directly or indirectly owns ten percent (10%) or more of the equity of Transferor.

- (5) LGN certifies pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301.

LightWave certifies pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301.

- (6) Description of the transaction

Applicants request Commission approval for LightWave to transfer substantially all of its assets, including its wholesale customer base, to LGN.

(7) Description of geographic areas served by Applicants and their affiliates.

- Transferee: LGN builds, owns and operates metropolitan fiber optic networks, providing data transport services to primary carrier hotels, ILEC central offices, key enterprise buildings and other major data aggregation facilities located in the largest U.S. metro areas, including Atlanta, Chicago, Dallas, Houston, Los Angeles, New York/Northern New Jersey, San Francisco/San Jose, Seattle and Washington D.C./Northern Virginia.
- Transferor: LightWave is a facilities-based provider of metro optical access services, offering a seamless optical interconnection between major carrier hotels, data centers and **Verizon** central offices within the Washington, D.C. to New York City corridor.

(8) Streamlined Treatment.

Applicants respectfully submit this Application qualifies for streamlined treatment because, as explained below, the proposed asset transfer does not have the potential to harm the public interest.

The Commission in the *Streamlining Order* established a presumption for transactions where neither of the applicants is dominant with respect to any service and the transaction would result in less than 10 percent market share! The Commission noted that it based its presumption upon guidelines suggesting that "total combined market shares of less than 10 percent in markets that are 'moderately concentrated' -- or even highly concentrated -- are unlikely to have adverse competitive consequences and ordinarily require no further analysis."

Applicants submit that the proposed asset transfer transaction is unlikely to have adverse competitive consequences and requires no further analysis because: (a) neither Applicant is dominant with respect to any service and (b) the market presence of Transferee following the transfer of assets will be less than 10 percent.

The Commission also found that "transfers of incumbent LEC local exchange assets are unlikely to raise the potential of competitive harm and therefore are eligible for presumptive streamlined treatment."<sup>6</sup> Given that Applicants are nondominant carriers, the proposed transfer of assets from Lightwave to LGN is even less likely to raise the potential of competitive harm than a comparable transfer of local exchange assets between ILECs. Having concluded that the latter category of asset transfers qualifies for presumptively streamlined treatment, the Commission should accord streamlined treatment to this Application.

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<sup>5</sup> *Streamlining Order*, 17 FCC Rcd at 5532-33; see also 47 C.F.R. § 63.03(b)(2)(i).  
*Id.* at 5533 n.65.  
*Id.* at 5534-35; see also 47 C.F.R. § 63.03(b)(1)(iii).



Because the proposed asset transfer has no potential to result in harm to the public interest, Applicants respectfully submit that this Application qualifies for streamlined processing.

(9) Related Applications.

No other FCC applications relate to the transaction that is the subject of this Application.

(10) Special Consideration.

Applicants anticipate that the asset transfer described herein will take place on or about December **12, 2002**, and therefore respectfully request that this Application be placed on public notice no later than November 11, 2002.

Applicants are not requesting special consideration of this Application because either is facing imminent business failure.

(11) Waiver Requests.

No waiver requests have been filed in conjunction with this transaction.

(12) Statement of Public Interest.

Grant of this Application will **serve** the public interest, convenience and necessity by promoting competition among telecommunications carriers. Specifically, approval of the proposed asset transfer will enable LGN to strengthen its competitive presence in the geographic service areas where Lightwave's network assets **are** located and to concentrate its resources and expertise on providing innovative and diversified transport service offerings for carriers serving these markets. These enhancements will inure directly to the benefit of Lightwave's affected carrier customers as well as indirectly to consumers generally in the domestic telecommunications marketplace.

### III. CONCLUSION

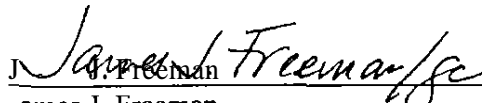
Wherefore, for the reasons stated herein, Applicants respectfully submit that the public interest, convenience and necessity would be furthered by grant of this Application for domestic Section 214 authorization for Lightwave to transfer substantially all of its assets to LGN.

Respectfully submitted,



Grace R. Chiu  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7645

Counsel to  
**LOOKING GLASS NETWORKS, INC**



Katherine E. Barker  
KELLEY DRYE AND WARREN, LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Tel: (202) 955-9600  
Fax: (202) 955-9792


Counsel to  
**LIGHTWAVE COMMUNICATIONS, INC.**

Dated: November 6, 2002

**CERTIFICATION**

On behalf of Looking Glass Networks, Inc., I hereby certify that the statements **in** the foregoing Application for Domestic Section 214 Authorization To **Transfer** Assets are true, complete, **and** correct to the best **of my** knowledge and are made in good faith.

**LOOKING GLASS NETWORKS, INC.**

By:   
Jodi J. Caro


Title: Vice President & General Counsel

November 5.2002

**CERTIFICATION**

On behalf of Lightwave Communications, Inc. I hereby certify that the statements in the foregoing Application for Domestic Section 214 Authorization To Transfer Assets are **true**, complete, and correct to the best of my knowledge and are made in good faith.

**LIGHTWAVE COMMUNICATIONS, INC.**

By:   
Title: CEO

November 5.2002